ORDER 96-2-31

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

SERVED FEBRUARY 23, 1996

Issued by the Department of Transportation
on the 16th day of February, 1996

Essential Air Service at: **EPHRATA/MOSES LAKE, WASHINGTON** under 49 U.S.C. 41731 *et seq.*	**Docket 41541**

ORDER TENTATIVELY SELECTING CARRIER

SUMMARY

By this order we are tentatively reselecting Horizon Air Industries, Inc., (Horizon) to provide two nonstop round trips a day between Ephrata / Moses Lake, Washington, and Seattle for the two-year period ending December 27, 1997, at an annual rate of $177,628.

BACKGROUND

Horizon has provided subsidized service at Moses Lake for many years. Most recently Order 94-2-2 selected Horizon to provide three nonstop round trips per service day to Seattle with 18-seat Metro III aircraft at an annual rate of $326,875. That rate was originally set for the two-year period ending December 31, 1995. However, prior to the scheduled expiration date, the Department's fiscal year 1996 appropriation was reduced to the point that we had to reduce subsidy expenditures at all subsidized communities.

For fiscal year 1996, Congress significantly reduced the budget for the Department's Essential Air Service program from $33.4 million to $22.6 million annually. As a result, the Department was compelled to implement program-wide subsidy reductions, effective November 27, 1995. In general, the reductions consisted of (a) terminating subsidy support for service to communities' second hubs, and (b) terminating subsidy support for service exceeding ten round trips a week, thus essentially withdrawing subsidy for weekend service and for more than two round trips a day. In the case of Ephrata / Moses Lake, that resulted in a subsidy reduction from the original rate of $326,875 to $210,653--based on a service reduction from 18 to the new 10-round-trip-per-week standard. (See Order 95-11-28 for a full discussion of the budget cuts and subsidy rate reductions.)

Under our normal procedures when nearing the end of a rate term, we contact the incumbent carrier to determine whether it is interested in continuing service and whether it will continue to require subsidy. If the carrier wishes to continue service with subsidy, we usually negotiate a new subsidy rate with the carrier, issue an order tentatively reselecting the carrier for a new rate term at the agreed rate, and direct other parties to show cause why we should not finalize our tentative decision. Other carriers wishing to submit competing proposals are invited to do so in response to the show-cause order; if any such proposals are filed, we process them as a competitive case. Consistent with this practice, we invited Horizon to submit a proposal for continuation of essential air service at Ephrata / Moses Lake.

The carrier submitted a proposal for a new two-year period to provide two round trips each weekday. The carrier has agreed to an annual subsidy of $177,628 for this service, a reduction from the prior period. By this order we will provide for other parties to file competing proposals or to show cause why we should not select Horizon for an additional two-year period at the $177,628 rate.

TENTATIVE RESELECTION

Horizon has provided reliable service at Ephrata / Moses Lake for a number of years. In response to its service, traffic has grown and subsidy rates have decreased. In fact, Horizon has historically provided service in excess of that which we subsidize. Horizon currently provides Moses Lake with four nonstop round trips a day, and has stated that it will continue to provide extra service. The carrier’s proposed rate appears reasonable. In view of the above, we will tentatively reselect Horizon to provide two nonstop round trips a day, five days a week, between Ephrata / Moses Lake and Seattle, for an additional two-year period through December 27, 1997. Service is to be provided with 18-seat Metro III aircraft, as detailed in Appendix C, for an annual subsidy of $177,628.

OBJECTIONS OR PROPOSALS

In accordance with normal procedures for essential air service carrier selections, we will allow interested parties 20 days to object to our decision and/or to file competing proposals. Given the current budget levels, we request carriers to submit proposals providing the equivalent of two nonstop or one-stop round trips a day, five days a week, to Seattle or any other suitable hub with 15-seat or larger aircraft. In order to assist carriers in making their traffic and revenue forecasts, we have included historical traffic levels in Appendix D. If no timely objections or competing proposals are filed, this order will automatically become final. We expect persons objecting to our tentative decision to support their objections with relevant and material facts. We will not entertain general, vague, or unsupported objections.

PROCEDURES FOR FILING PROPOSALS

For interested air carriers that are not familiar with our procedures and recommended form for supplying the necessary information, we have prepared two explanatory documents that we will make available upon request. The first describes the process for handling carrier replacement cases under 49 U.S.C. 41734(f) (formerly section 419 of the Federal Aviation Act) and discusses in detail the process of seeking proposals, conducting financial and operational audits of the applicant carriers and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, and a copy of section 14 CFR 204.4 of the Department's regulations which deals with the information required of all applicants for authority to provide basic essential air service, and provides schedules giving our recommended form for submitting data required for determining the financial and operational ability of applicants to provide dependable air service. [1]

Community and State Comment

If we receive competing proposals the community and State are welcome to submit comments on the proposals at any time. [2] Early in the proceeding, comments on the perceived strengths and weaknesses of the proposals would be particularly helpful to the Department, although the civic parties may also express a preference for a particular carrier or proposal option at that time, if they choose. In any event, after we conclude rate conferences with all applicants, we will provide a summary of the conference results to the civic parties and ask them to file their final comments. [3]

Other Carrier Requirements

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination. [4] Consequently, all carriers receiving Federal subsidy to support essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed $100,000 over the life of the rate term must also certify that they are in compliance with regulations governing lobbying activities. All carriers that plan to submit proposals involving subsidy should submit the required certifications along with

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[1] Copies of these documents can be obtained from: EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590. Telephone requests for these documents are accepted at (202) 366-1053.

[2] Civic parties should file an original and five copies of their comments in Docket 41541. This filing should be addressed to: Documentary Services Division, Docket Section, C-55.1, Office of the Secretary, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, S.W., Washington D.C. 20590.

[3] In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not normally hold rate conferences. Instead, we allow the carrier to institute the service as proposed.

[4] The regulations applicable to each of these areas are (1) 49 CFR Part 20, New Restrictions on Lobbying, Implementing title 31, United States Code, section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions"; (2) 49 CFR Part 29, Subpart F, Drug-Free Workplace Requirements (Grants) implementing the Drug-Free Workplace Act of 1988; (3) 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs for the Department of Transportation--Effectuation of Title VI of the Civic Rights Act of 1964; 49 CFR Part 27, Nondiscrimination on the basis for Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and 14 CFR Part 382, Nondiscrimination on the Basis of Handicap in Air Travel.

their proposals. Interested carriers requiring more detailed information regarding these requirements as well as copies of the certifications should contact the Office of Aviation Analysis at (202) 366-1053. The Department is prohibited from paying subsidy to carriers that do not submit these documents.

CARRIER FITNESS

U.S.C. 41737 (b) and 41738 require that we find a commuter carrier fit, willing, and able to provide service before we pay it compensation for essential air service. In that regard, Horizon has operated successfully as an Alaska Airlines code-share carrier for a number of years. The carrier's fitness was last reviewed in Order 94-2-2 in conjunction with its selection to serve Ephrata / Moses Lake. Horizon remains subject to the Department's continuing fitness monitoring. We have contacted the FAA, and they know of no reason to question Horizon's fitness. We therefore conclude that the carrier remains fit to conduct the operations proposed here.

This order is issued under authority delegated in 49 CFR 1.56(i).

ACCORDINGLY,

1. The Department tentatively reselects Horizon Air Industries, Inc., to provide essential air service at Ephrata/Moses Lake, Washington, for the two-year period beginning January 1, 1996, through December 27, 1997;

2. The Department tentatively sets the final rate of compensation for Horizon Air Industries, Inc., for the provision of essential air service at Ephrata/Moses Lake, Washington, from January 1, 1996, through December 27, 1997, at $177,628 per year, as described in Appendix C, payable as follows: for calendar months during which essential air service is provided, the amount of compensation shall be subject to a ceiling per week of $3,545.40, and shall be determined by multiplying the subsidy-eligible departures and arrivals operated during the month, assuming a 18-seat Metro III aircraft, by $177.27 per departure; [5]

3. In the event timely objections or competing proposals are filed, the rate tentatively established in ordering paragraph (2) above, shall be effective as a final rate until further Department action;

4. The Department requests that interested parties show cause within 20 days of the date of service of this order why we should not make final the tentative findings and conclusions set forth above. Objections should be filed with the Documentary Services Division, C-55, Room PL-401, 400 7th Street, S.W., Washington, D.C. 20590. Carriers interested in filing competing proposals to serve Ephrata/Moses Lake, Washington, should submit their proposals, with subsidy requests if necessary, within 20 days of the date of service of this order. Proposals should include all the data

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[5] See Appendix B for calculations.

required by section 204.4 of our Regulations (14 CFR 204.4). An original and five copies of the proposal should be sent to the EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, with the title, "Proposal to Provide Essential Air Service at Ephrata/Moses Lake, Washington, Docket 41541;"

5. If no objections or competing proposals are filed, all further procedural steps will be deemed waived, and the carrier selection tentatively made by this order shall become final on the twenty-first day after the date of service of this order;

6. Subsidy payments are subject to the availability of funds. If the Government terminates payments because of insufficient appropriated funds, then, at the end of the period for which the Government does make payments, the carrier may cease to provide the service provided for under this agreement without regard to any requirement for notice of such cessation;

7. We find that Horizon Air Industries, Inc., continues to be fit, willing, and able to operate as a commuter air carrier and is capable of providing reliable air service at Ephrata / Moses Lake, Washington;

8. We direct Horizon Air Industries, Inc., to retain all books, records, and other source and summary documentation to support claims for payment and to preserve and maintain such documentation in a manner that readily permits the audit and examination by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order; and

9. The Department will serve copies of this order on the Mayor and airport manager of Moses Lake, Washington, the Mayor of Ephrata, Washington, the Governor of Washington, the Washington Department of Transportation, Horizon Air Industries, Inc., and the carriers listed in Appendix E.

By:

CHARLES A. HUNNICUTTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at http://www.dot.gov/dotinfo/general/orders/aviation.html

Horizon Air Industries, Inc., Essential Air Service to be Provided to Ephrata/Moses Lake, Washington Docket 41541

Effective Period: January 1, 1996, through December 27, 1997

Service: Ten nonstop round trips per week to Seattle

Aircraft Type: Metro III, 18-seats

Rate per Departure to and Arrival from Seattle: $177.27 [6]

Weekly Ceiling:[7] $3,545.40 [8]

Note: the carrier has been placed on notice that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of this order, including the service plan outlined above and any other significant elements of the required service, without prior approval. In addition, if for a significant period of time the carrier either does not schedule or operate its flights in full conformance with this order, the carrier may jeopardize its entire subsidy claim for the period in question. If any such changes are contemplated during the applicable period of this rate, the carrier must first notify the Office of Aviation Analysis in writing and receive approval from the Department of Transportation to be assured of full compensation. Carriers must complete all flights that can be safely operated. An aircraft taking-off and landing at its scheduled destination constitutes a completed flight. Only completed flights are considered eligible for subsidy absent an explanation for not completing the flight (such as certain weather cancellations). Flights which overfly subsidized points for lack of traffic will not be compensated.

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[6] $177,628 annual compensation, divided by 1,002 departures, calculated as follows:
4 departures / arrivals per day x 261 weekdays x .96 completion = 1,002.

[7] Calendar weeks, Sunday through Saturday, that fall into separate calendar months will be treated as part of the later month for the purpose of calculating both service weeks per month and the monthly compensation.

[8] 20 departures per week x $177.27 = $3,545.40